

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF MICHIGAN
AND
THE DEPARTMENT OF THE ARMY

I. PURPOSE AND AUTHORITY

- A. Section 404(g)-(1), Clean Water Act (CWA) (Public Law 92-500, Public Law 95-217; 33 USC 1344(g)-(1)), authorizes the Administrator, Environmental Protection Agency to approve a state administered program for the discharge of dredged or fill material into certain waters of the state. The Environmental Protection Agency has promulgated regulations, 40 CFR 233 (1980), describing the specific requirements for transferring a portion of the Section 404 discharge of dredged or fill material permit program from the Corps of Engineers to the state.
- B. The State of Michigan is submitting its state administered program for the discharge of dredged or fill material in compliance with the above cited authorities. This Memorandum of Agreement between the State of Michigan and the Department of the Army Corps of Engineers fulfills the requirements of 40 CFR 233 (1980).
- C. Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into the waters of the United States. The North Central Division, U.S. Army Corps of Engineers encompasses the State of Michigan in the administration of the Section 404 program.

The Division Engineer, North Central Division, U.S. Army Corps of Engineers, has been delegated the authority to enter into a Memorandum of Agreement with a state assuming administration of the Section 404 program pursuant to Section 404(g)-(e) of the Clean Water Act.

II. DEFINITIONS

- A. State of Michigan means the Michigan Department of Natural Resources, hereinafter referred to as DNR.
- B. Department of the Army means the Corps of Engineers, hereinafter referred to as the COE.
- C. United States Environmental Protection Agency will hereinafter be referred to as EPA.
- D. Regional permits means those regionally issued COE general permits applicable within the State of Michigan.
- E. Nationwide permits means those permits issued by the Chief of Engineers.

III. STATE WATERS TO BE REGULATED

- A. Consistent with the provisions of Section 404(g) CWA, all waters within the State of Michigan shall be regulated by DNR as part of this program OTHER THAN those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including wetlands adjacent thereto. These waters are specifically identified in ATTACHMENT A - "Navigable Waters of the United States in U.S. Army Engineer District, Detroit, November 1981", attached to this Memorandum of Agreement, which will be regulated by DNR and COE under applicable state and Federal statutes.

IV. JOINT PERMIT PROCESSING

- A. When a proposed activity is located in a navigable water of the U.S. and requires both a state permit and permit under the Rivers and Harbors Act of 1899 (Section 10) from the COE, joint processing procedures shall be consistent with those established in the July 28, 1977 Memorandum of Understanding between the Detroit District, COE and the DNR.

V. GENERAL PERMITS

- A. General permits consist of two categories of permits: (1) regional permits issued by the Detroit District, COE, and (2) nationwide permits issued by the Chief of Engineers, COE.
- B. The COE has issued Section 404 regional and nationwide permits within the state for activities regulated by the COE in waters of the state. These general permits remain in force in all waters of the U.S. except in state regulated waters. During the EPA approved state 404 program, the Detroit District, COE, shall suspend the issuance of permits to applicants in other than the navigable waters of the U.S. in Michigan specified in paragraph III. Activities authorized prior to DNR program assumption will remain valid until they expire.

VI. CORPS OF ENGINEERS EMERGENCY OPERATIONS

The COE emergency response and recovery activities under Public Law 84-99 as a result of a natural disaster will, as always, be closely coordinated with the State of Michigan.

VII. CORPS OF ENGINEERS WATER RESOURCE PROJECTS

- A. Detroit District, COE, proposed projects involving the discharge of dredged or fill material into waters of the United States must be developed in accordance with guidelines promulgated under the authority of Section 404(b)(1) of the Clean Water Act, as amended, unless exempted by Section 404(f). For such projects in a water to be regulated by DNR, other than projects specifically authorized by Congress for which the Detroit District, COE, has applied or will apply the Section 404(r) procedures, the Detroit District, COE, will provide the following to DNR:

1. Completed permit application form and plans.

2. An Environmental Assessment or Draft or Final Environmental Impact Statement, which contains the most accurate and complete water quality and related information practicable to allow application of Section 404(b)(1) Guidelines by the DNR.

B. Additional information may be requested if necessary for application of Section 404(b)(1) Guidelines.

C. Detroit District, COE, proposed projects which are determined by the District Engineer to be emergencies, based on the necessity for prompt action to prevent or reduce risks to life, health, or property, or severe economic losses will always be coordinated with the State of Michigan for necessary authorizations.

VIII. RECORDS TRANSFER

Upon notification of DNR program approval from the Administrator, EPA, the Detroit District, COE, shall promptly initiate the orderly transfer, to DNR, of pending permit applications with associated documents for activities and records of unexpired issued permits subject to the approved state program. Details for the orderly transfer will be mutually agreed to by DNR and Detroit District, COE.

IX. PROTECTION OF NAVIGATION OR ANCHORAGE

If the Detroit District, COE, determines and provides written documentation to the DNR, after consultation with the Secretary of the Department in which the Coast Guard is operating (or his designee), that a proposed activity would substantially impair anchorage or navigation, the DNR shall: (1) deny the 404 permit; or (2) the DNR shall notify the EPA that the DNR does not concur and does not intend to deny the project proposal under the 404 program.

X. REVIEW OF PROPOSED STATE PERMITS

A. The Detroit District, COE, waives the right to review DNR permits, except:

1. Major discharges or discharges into areas which could impact existing or proposed Detroit District, COE projects.
2. Discharges that may affect navigation in navigable waters of the U.S.

B. The Detroit District, COE, may modify the waived permit categories upon written notification to Region V, EPA of the requested changes and concurrence by Region V, EPA and DNR.

XI. ENFORCEMENT

The COE shall transfer enforcement responsibility for all individual, nationwide, and regional permits for 404 activities in state regulated waters as issued to applicants at the time of DNR program assumption.

XII. EFFECTIVE DATE AND REVISIONS

- A. This MOA shall become effective upon approval of the DNR 404 assumption program by the Administrator, EPA, and subsequent notification from the DNR that it is administering the program.
- B. This MOA and procedures established in conformance with it, shall be reviewed periodically, or at least once every twelve months, by DNR and the Detroit District, COE. Mutually agreed-upon revisions shall become effective upon signed amendments to the MOA. Either DNR or the COE, may initiate revisions when necessary.
- C. This MOA shall be suspended in the event the Administrator, EPA, withdraws approval of the state program pursuant to Section 404(1) CWA, or in the event that DNR notifies the COE and Region V, EPA 60 days in advance of the state's intent to terminate its program.

STATE OF MICHIGAN:

RONALD O. SMOOG, Director
Department of Natural Resources



Date

DEPARTMENT OF THE ARMY:

JEROME B. HILMES
Brigadier General, USA
Commander, North Central Division



Date

NAVIGABLE WATERS OF THE UNITED STATES IN U.S. ARMY ENGINEER DISTRICT, DETROIT

NOVEMBER 1981

In administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, this Department exercises jurisdiction over the waterways listed below, from their mouths to the heads of navigation as follows:

NAME OF WATERWAYHEAD OF NAVIGATION

AUGER RIVER, Michigan	U.S. 23 Bridge at Au Gres, 2.8 miles above mouth
AUGER RIVER, Michigan	Foots Dam, 7 miles above mouth
ADAMS RIVER, Michigan	Upper City Limits of St. Charles
ADAMS RIVER, Michigan	2800 Ft. above northern limits of Marine City
BETTSIE LAKE, Michigan	Navigable throughout
BETTSIE RIVER, Michigan	Head of Betsie Lake at Frankfort, 1.3 miles above mouth
BLACK RIVER, Michigan (St. Clair County)	Beach Road 7 miles above mouth
BLACK RIVER, Michigan (Ottawa County)	Head of Black Lake (Lake Macatawa) at Holland, 5.75 Miles from Lake Michigan
BLACK RIVER, Michigan (Van Buren County)	Michigan Central R.R. Bridge at South Haven, 2.5 Miles above mouth
BLACK RIVER, Michigan (Gogebic County)	Navigable 950 feet upstream from mouth
BURNING LAKES, Michigan	Navigable throughout
CAWABAW RIVER (LEELANAU RIVER), Michigan	Dam at Leland, 400 feet above mouth
CEDAR RIVER, Michigan	0.3 miles above mouth
CHARLOTTE RIVER, Michigan	Country road bridge 1/3 mile above mouth
CHEBOYGAN RIVER, Michigan	Navigable throughout
CLINTON RIVER, Michigan	Gratiot Ave. Hwy. Bridge, Mt. Clemens
CROOKED LAKE, Michigan	Navigable throughout
CROOKED RIVER, Michigan	Navigable throughout
DETROIT RIVER, Michigan	Navigable throughout
ECORSE RIVER, Michigan	Jefferson Ave. - Biddle St. Bridge, 400 Feet above mouth
ELIEN RIVER, Michigan	Whittaker St. Bridge at New Buffalo, 0.25 mile above mouth
GRAND CALUMET RIVER, Indiana	Navigable throughout
GRAND RIVER, Michigan	Fulton St. Bridge at Grand Rapids, 40 miles above mouth
HURON RIVER, Michigan	U.S. 24 Bridge at Flat Rock
INDIAN RIVER, Michigan	Navigable throughout
INDIANA HARBOR CANAL, Indiana	
MAIN STEM	Navigable throughout
CALUMET RIVER BRANCH	Navigable throughout
LAKE GEORGE BRANCH	From the Main Stem to White Oak Avenue in East Chicago
INDIANA RIVER, Indiana	Navigable throughout
KALAMAZOO LAKE, Michigan	Navigable throughout
KALAMAZOO RIVER, Michigan	Dam at Allegan, 31.5 miles above mouth
KANSAS RIVER, Indiana	Navigable throughout
KANSAS RIVER, Michigan	Michigan Central R.R. Bridge at Kawkalin, Approximately 4 miles above mouth
KANSAS WATERWAY, Michigan	Navigable throughout, including Portage Lake, Torch Lake and Torch Canal
LAKE LA BELLE, Michigan	Navigable throughout, including canal to Lake Superior

NAME OF WATERWAYHEAD OF NAVIGATION

LAKE CHARLEVOIX, Michigan	Navigable throughout
LAKE ERIE, Michigan	Navigable throughout
LAKE HURON, Michigan	Navigable throughout
LAKE MACATAWA, Michigan	Navigable throughout
LAKE MICHIGAN, Michigan	Navigable throughout
LAKE ST. CLAIR, Michigan	Navigable throughout
LAKE SUPERIOR, Michigan	Navigable throughout
LA PLAISANCE CREEK, Michigan	La Plaisance Road Bridge
LEELANAU RIVER (CARP RIVER), Michigan	Dam at Leland, 400 feet above mouth
LITTLE CALUMET RIVER, Indiana	Navigable throughout
LITTLE LAKE, Michigan	Navigable throughout
MANISTEE LAKE, Michigan	Navigable throughout
MANISTEE RIVER, Michigan	Including Manistee Lake, 5.6 miles from Lake Michigan
MANISTIQUE RIVER, Michigan	Upper end of lumber slips at Manistique, 3/4 mile above mouth
MAUMEE RIVER, Indiana	Hosey Dam at Fort Wayne
MENOMINEE RIVER, Michigan	From its mouth upstream 1.86 miles to but not including the Interstate Highway Bridge (U.S. 41)
MONA LAKE, Michigan	Navigable throughout
MULIET LAKE, Michigan	Navigable throughout
MUSKEGON LAKE, Michigan	Navigable throughout
MUSKEGON RIVER, Michigan	M-37 Highway Bridge, 39-1/4 mile above mouth (33 Miles from head of Muskegon lake)
NORWICH LAKE, Michigan	Navigable throughout including connection to Lake Mich.
ONTONAGON RIVER, Michigan	Milwaukee Railroad Bridge 0.76 mile above mouth
OTTAWA RIVER, Michigan	Detroit & Toledo Shore Line Bridge about 3 miles up-stream
PAW PAW RIVER, Michigan	Paw Paw Avenue, Benton Harbor, 2 miles above mouth
PENTWATER LAKE, Michigan	Navigable throughout
PENTWATER RIVER, Michigan	Head of Lake, 2-1/4 miles from lake Michigan
PERE MARQUETTE LAKE, Michigan	Navigable throughout
PERE MARQUETTE RIVER, Michigan	Head of Pere Marquette Lake 3 miles from Lake Michigan
PIGEON RIVER, Michigan	Upper Village limits of Caseville
PINE RIVER (Arenac County)	M-25 Bridge, 1/2 mile above mouth
PINE RIVER (St. Clair Co.)	Detroit Port Huron R.R. Bridge - 3 miles above mouth
PINE RIVER (Charlevoix Co.)	Upper end of both arms, Charlevoix Lake, Michigan 15 miles above mouth
PINNEBOG RIVER, Michigan	Junction with creek, 1/2 mile above mouth
PORTAGE LAKE, Michigan	Navigable throughout
RAISIN RIVER, Michigan	M.C. R.R. Bridge at Monroe - 2 1/2 mile above mouth
ROUGE RIVER, Michigan	M.C. R.R. Bridge at Dearborn (Junction Bridge)
SAGINAW RIVER, Michigan	Navigable throughout
ST. CLAIR RIVER, Michigan	Navigable throughout
ST. JOSEPH RIVER, Michigan	Dam at Berrien Springs, 24.7 miles above mouth
ST. MARY'S RIVER, Michigan	Navigable throughout
SEBEWAING RIVER, Michigan	Pere Marquette R.R. Bridge 1/2 mile above mouth
SHOSSE RIVER, Michigan	Junction with Bad River
SHOSSE LAKE, Michigan	Navigable throughout
SHOSSE RIVER, Michigan (Baraga & Houghton Co's)	30 miles above mouth
TANQUAMENON RIVER, Michigan	Lower Falls, approximately 16 miles above mouth
THUNDER BAY RIVER, Michigan	Dam near upper city limits of Alpena
TITTABAWASSEE RIVER, Michigan	Dam in Midland
TRAIL CREEK, Indiana	E Street Bridge at Michigan City, 1 mile above mouth

NAME OF WATERWAYHEAD OF NAVIGATION

TRAVERSE RIVER, Michigan

Navigable 4,500 feet upstream of mouth

W... RIVER, Michigan

D.S.S. & A.R.R. Bridge 3/4 mile above mouth

... LAKE, Michigan

Navigable throughout

WHITE RIVER, Michigan

Head of White Lake, 6.8 miles from Lake Michigan

All Federal navigation projects are navigable waters of the United States to upstream and/or landward limit of project.

It should be understood that this merely represents the views of the Department since the jurisdiction of the United States can be conclusively determined only through judicial proceedings.